

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2198 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

JAI HIND RUBBER PRODUCTS (GUJARAT)PVT.LTD.

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

MR DF AMIN for Petitioner
MR TUSHAR MEHTA for Respondent No. 1
SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 21/07/97

ORAL JUDGEMENT

Rule. Mr Tushar Mehta, learned advocate waives service on behalf of the respondents. At the request of the learned advocates this petition is finally heard today.

The petitioner by way of this petition challenged the order dated 2.3.1996 passed by the Appellate Committee, whereby the appeal preferred by the petitioner came to be dismissed. The petitioner in the said appeal, challenged the supplementary bill of Rs 10,73,243-20ps issued against the petitioner on the ground that the petitioner has committed theft of power consumption. It

may be stated that a criminal case being Criminal Case No. 583 of 1993 was also registered against the petitioner in the Court of learned J.M.F.C., Navsari, wherein the petitioner was acquitted by the learned J.M.F.C. on 12.8.1994. Mr Amin learned advocate appearing for the petitioner has submitted that the Appellate Committee has not considered the acquittal of the petitioner by the Criminal Court and has also not considered the question of calculation which is defective. In the submission of Mr Amin, the petition is required to be allowed on this count only.

After having gone through the reasonings of the Appellate Committee, I find that the Appellate Committee has, in fact, considered the judgment of the learned J.M.F.C., however, the appellate committee has recorded a finding that the learned J.M.F.C. has acquitted the petitioner on technical grounds. It appears that the learned J.M.F.C. in para-10 of the judgment has, in fact, gone through the merits of the case which is not reflected in the order passed by the Appellate Committee. Mr Tushar Mehta learned advocate appearing for the respondent-Board has invited my attention to Clause-34 of the Conditions and Miscellaneous Charges for Supply of Electrical Energy which inter alia provides that "Neither failure to launch a prosecution nor the acquittal of the consumer in any prosecution on any ground other than the prosecution case is false shall bar the proceedings under this clause." He, therefore, submitted that it is always open for the Board to proceed against the consumer irrespective of the prosecutin. In any case, since the appellate committee has not considered the finding recorded by the learned J.M.F.C. on merits of the case and has also not considered the effect of clause-34 of the Conditions and Miscellaneous Charges for Supply of Electrical Energy. I feel that it is necessary that the appellate committee shall go into that question afresh. Mr Amin also pointed out that the calculation made in the supplementary bill is itself defective as per the grounds stated in the Appeal. Even this contention though raised before the Appellate Committee, has not at all appreciated. I feel that the said contention shall also gone into by the Appellate Committee. Out of total amount of more than Rs 10 lacs, the petitioner by this time deposited only Rs 300,000/. It is the case of the petitioner that he is liable to make the payment to the extent of Rs 4 lacs. In view of this, and without entering into the merits of the case, the matter is remanded back to the Appellate Committee to consider the question already raised above and after hearing the parties and to record a fresh finding

provided that petitioner shall deposit for the time being Rs 1 lac out of the total dues before the Respondent-Board.

The petitioner shall deposit Rs 1 lac within 4 weeks from today. If Rs 1 lac is deposited before the respondent-board, in that event, the Appellate Committee will hear and decide the Appeal of the petitioner. Rule is made absolute to the aforesaid extent only with no order as to costs.
